

**Special Called Meeting of the City of Sandy Springs Board of Ethics Meeting held on December 21, 2007 at 9:00 AM**

**City Clerk Rowland** called the roll.

**Board Members Present:** Jim Langlais, Charles Maddrey, Glenn Moffett, Andrew Heyward, Nancy McCord, and Susan Dew.

Dick Isenberg, absent excused

**Staff Present:** City Clerk Christina Rowland and Assistant City Attorney Cecil McLendon

**Chairman Langlais** stated that also present is Dianne Fries, Ashley Jenkins, Mark Thomas, and Caroline Gray.

**Call to Order**

**Chairman Langlais** called the meeting to order at 9:00 a.m.

**Discussion of Ethics Complaints filed by Mr. Mark Thomas dated November 12, 2007.**

**Chairman Langlais** stated that this is not a hearing and therefore there will be no public comments. He stated that the purpose of this meeting is to review three (3) complaints filed by Mark Thomas on November 13, 2007 against Councilmembers Dianne Fries, Ashley Jenkins, and Tiberio DeJulio to be referred to as the complaints.

He stated that the Board has jurisdiction to discuss and consider these complaints pursuant to Section 13 of the Sandy Springs Ethics Ordinance. Councilmembers Fries, Jenkins and DeJulio have filed responses to the complaints denying the allegations.

**Chairman Langlais** stated that in the complaints, Mr. Thomas alleges that by their response to campaign literature circulated by Mr. Thomas, these council members violated Section 11(c) and (e) of the City's Ethics Ordinances. Specifically, Mr. Thomas alleges that the council members in question falsely represented their personal opinions to be the opinion of the City of Sandy Springs and the Sandy Springs City Council. He also alleges that the council members in question used their official positions as city council members to influence or interfere with or affect the results of the election for the then vacant District 1 council seat for which Mr. Thomas was a candidate.

The purpose of this Special Called Meeting is to evaluate the complaints in accordance with Section 17 of the Ethics Ordinance. Pursuant to Section 17, the Board has several options. The Board can dismiss an ethics complaint for one or more of the reasons delineated in that section. The Board can determine that no violation of the Ethics Ordinance has occurred. The Board can determine that facts asserted are sufficient to warrant a hearing on the matter. Finally, the Board can determine that more information is needed.

**Motion and Second:** Mr. Moffett moved to dismiss this complaint because it fails to state any claim upon which any relief can be granted under the Ethics Ordinance. Mr. Maddrey seconded the motion.

**Discussion on the Motion:** Mr. Moffett stated that his reason to dismiss is based on the fact that the City letterhead was not used by the council members. Additionally, only three of the five council members had anything to do with the distribution of this particular letter. It is also clear that the note at the bottom of the

letter, "not paid for at taxpayers expense", that this is not an official letterhead. Further, no candidate is endorsed in this letter. Therefore that cannot be confused as an attempt to say that the Council supports one particular candidate. There is no signature of the Mayor of the City, the Secretary of the City or the Manager of the City. There is no seal from the City. There is no intentional misrepresentation gleaned from reading this letter. Looking at the letter as a whole, it is clear that this is not an official Sandy Springs Council letterhead. If you read the entire letter, it is clear that this is not a violation of the City's ethics laws or any per se violation of the City's ethics laws.

**Chairman Langlais** stated that section 1(b) of the Ordinance states "It is the responsibility of each public servant to act in a manner which contributes to cultivating public trust in the integrity of government and avoiding even lawful activity when the appearance of impropriety would lessen the public's confidence." He stated that section 1(c)1 goes on to state "public servants are also members of society and, therefore, share the same general personal and economic interests in the decisions and policies of government as all members of the community." Section 1(c)2 states "public servants retain their rights to publicly express their views on matters of general public interest, and to express their opinions on the effect of public actions on their personal or economic interests or rights".

He stated that the Board is dealing with balancing ethics in government and individual's rights. Just because someone becomes an elected official does not mean they lose the benefits that others in society maintain as a right to free speech. They have every other right that we have.

He noted that he requested that Mr. McLendon review Georgia laws as they relate to elections. He read a section of the Georgia Election Code that stated "no person shall use the name or any colorable imitation of the name of an existing person or organization for the purposes of endorsing, circulating, or publishing campaign material without the authorization of such person or organization." The code goes on to define any colorable imitation means any name purposefully used with the intention of the user that a person reading such name will be misled into believing that such campaign material is being endorsed, circulated, or published by a person or organization other than the true endorser, circulator, or publisher.

The issue that needs to be discussed is that Mr. Thomas issued his campaign literature and there was a feeling by Ms. Fries, Ms. Jenkins, and Mr. DeJulio, according to their responses, that the campaign literature gave the impression that they were endorsing this candidate. According to their responses to the complaints, their letter was to clear that up and make sure that those in the public knew that they were not endorsing Mr. Thomas or any candidate. They did not send out a letter endorsing a particular candidate or trying to get people to not vote for a particular candidate; in this instance Mr. Thomas.

He displayed the City's official letterhead and the letter that was sent out. He stated that one could say that using their titles as council members is an ethics violation. He further stated that it is his opinion that they did not put this into issue; they were responding to their ethical obligation to this campaign law and letting people know this was not an endorsement. He stated that council members can endorse candidates and they can do it in their official capacity.

**City Attorney McLendon** concurred. Any ordinance otherwise would be subject to attack and would most likely not survive.

**Chairman Langlais** stated that the question is whether or not the letter gives the opinion that this is the official opinion of the City Council. He is of the opinion that it is not.

He stated that it is not on official letterhead and it is very clear that it is from three members of City Council. In this instance, they did not put their official position into play. Mr. Thomas, through his campaign



literature, put their position into play. Mr. Thomas states "Mayor Galambos (in bold) reached out to Mark shortly after the formation of our new city to enlist his expertise in drafting the new alcoholic beverage ordinance now in affect. On this committee, he worked closely with Council members Tibby DeJulio, Dianne Fries, and Ashley Jenkins." Ms. Fries, Ms. Jenkins, and Mr. DeJulio felt that gave the impression that there was an endorsement. He is of the opinion that they responded to that appropriately and within their rights to make the record clear that they were not giving an official endorsement and, in fact, do not endorse individuals publicly. Mr. Langlais questioned if there were any other thoughts from the Board.

**Mr. Maddrey** stated that he felt many people would not know exactly what the City's official letterhead looks like. However, the campaign literature used the title "council members" and listed their names. In response, the Council members were right to respond that they were not endorsing Mr. Thomas as Council members.

**Chairman Langlais** read the letter sent by Ms. Fries, Ms. Jenkins, and Mr. DeJulio. He explained that these Council members felt this literature made it sound as though they endorsed him. This is a response to this literature. As to the timing, it is his understanding that there were efforts made to speak to Mr. Thomas and his representatives after the campaign literature was issued but that did not lead anywhere. Therefore, they felt they had to respond in this manner.

**Mr. Maddrey** stated that two of the Council members did provide backup on their responses showing that there was some confusion.

**Mr. Moffett** stated that the Board should be looking at the letter itself. He questioned what it showed. He stated that if you read it reasonably, it is not a letter from the Sandy Springs City Council. He does not think they should use that terminology in the future. This is the only thing that brought the letter to the Board. What the Board should do is look at this letter and determine what the average voter would glean from reading it. He stated that it is clear that what they are saying is not on behalf of the City Council, in giving this letter to the public.

**Chairman Langlais** questioned if there were any comments from the other Board members.

**City Attorney McLendon** stated that the question on the table is regarding the letter as it relates to Section 11(c) of the Ethics Ordinance.

**Vote:** The motion carried unanimously.

**Chairman Langlais** stated that they would now move on to the alleged violations of Section 11(e) of the Ethics Ordinance.

**Motion and Second:** Mr. Moffett moved to dismiss this complaint on the grounds that any reasonable reading of the facts contained in this letter does not violate any election laws or any ethics law. Mr. Maddrey seconded the motion.

**Chairman Langlais** called for any comments from the Board. There was no further discussion.

**Vote:** The motion carried unanimously.

**Chairman Langlais** requested an Order of Findings of Fact to be discussed at the next meeting. Mr. McLendon stated that he would prepare an order for consideration.

**Adjournment**

Mr. Maddrey moved to adjourn the meeting. Mr. Moffett seconded the motion. The motion carried unanimously. The meeting adjourned at 9:25 a.m.



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Jim Langlais, Chairman



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Christina Rowland, City Clerk